

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No. 200/2012**

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26th July, 2016

SHRI SHYAM AGGARWAL

....Appellant

Through: Mr. Sachin Chopra and Mr. Shubhnit Hans,
Advs.

versus

SHEIKH MOHAMMAD YAHYA CHHABRA & ORS.Respondents

Through: Mr. Deepak Gupta and Mr. Gaurav
Shankar, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Vide Order dated 31.01.2014 a detailed order was passed, and which is a consent order, whereby the only real issue in these legal proceedings was to be resolved by demarcation report prepared by the revenue officials as per the total station method which is demarcation is done as per the laser system, and which is done on account of lands becoming built up areas and which were originally revenue/agricultural lands.

2. The Order dated 31.1.2014 reads as under:-

“1. The disputes in the present case pertain to the claim of the respondent No.1/plaintiff with respect to the suit property which falls in khasra Nos.2898/120/2, 2899/121/1 and 2942/122, Moja Chandawli, Shahdara, Delhi which was purchased under a registered sale deed dated 24.5.1942 by Sh. Hazi Hamid Ullah who was predecessor-in-interest/father of the respondent no.1/plaintiff.

2. The case of the appellant herein/defendant no.1 in the trial Court (other defendants have not challenged the impugned judgments of the Courts below) is that the appellant/defendant No.1 is not on the khasra numbers which have been purchased by Sh. Hazi Hamid Ullah by the registered sale deed dated 24.5.1942 as stated above but the suit land is said to be forming part of khasra Nos.2940/117/114 to 119 and 123, 2944/1142/126, 2944/1142/126/1, 121 and 123 in Moja Chandawli, Shahdara, Delhi.

3. The Courts below in this suit have relied upon the Local Commissioner report with respect to demarcation and which has found that the appellant/defendant No.1 is located on the suit property of the respondent No.1/plaintiff.

4. During the course of hearing, I put it to the counsel for the appellant that surely if the case of the appellant/defendant No.1 is that he is not existing on the property as per the khasra numbers of the sale deed dated 24.5.1942 then there would be no difficulty for him to continue to remain in possession although he may or may not be in khasra numbers as per the written statement, however in case the appellant/defendant No.1 is found to be stationed on the khasra numbers as per the registered sale deed dated 24.5.1942 i.e on 2898/120/2, 2899/121/1 and 2942/122, then the appellant will have to vacate that property in favour of the respondent No.1/plaintiff and to which **counsel for both the parties had no objection** subject to the fact that a fresh demarcation be done by the total station method to find out the location where the appellant/defendant No.1 is presently stationed/occupying the land. Also, the demarcation report which is now to be done by the total station method must specify that whether the property where the appellant/defendant No.1 is stationed is or is not situated in khasra numbers as per the sale deed dated 24.5.1942 executed in favour of Sh. Hazi Hamid Ullah. **It is agreed by the appellant that he will not challenge the fresh demarcation report if as per the same the appellant is found to be occupying the land which is subject matter of the sale deed dated 24.5.1942 in favour of Sh. Hazi Hamid Ullah.**

5. Counsel for both the parties state that both the parties will share equally the costs of getting the demarcation done by total station method and counsel for the appellant will not object to fresh demarcation, in case it is found that the appellant is presently stationed/located/occupying the property in khasra Nos.2898/120/2, 2899/121/1 and 2942/122, Moja Chandawli, Shahdara, Delhi. Let the parties deposit the charges for conducting of the demarcation by the total station method with appropriate authority as directed by the Deputy

Commissioner dealing with Shahdara District within four weeks from today and the concerned Deputy Commissioner will nominate a competent person/authority to carry out the demarcation in terms of the present order. Demarcation be carried out positively within two months from today and in case the demarcation is not carried out in this period, the highest official in the revenue department of the Deputy Commissioner who is responsible for demarcation will be present in Court on the next date of hearing.

6. This order is being passed in exercise of powers under Orders 41 Rule 27 and 42 Rule 1 of Code of Civil Procedure, 1908 (CPC) read with Section 165 of the Evidence Act, 1872.

7. List on 28th April, 2014.” (emphasis is mine)

3. Para 4 of the Order dated 31.1.2014, especially the last line thereof, shows that the appellant had agreed that he will not challenge the fresh demarcation report. This consent was recorded because otherwise it was known that even after demarcation report is prepared, the issue would not be resolved because the parties would be filing objections to the report, replies etc etc. It may also be noted that it is as against the appellants that there are two concurrent Judgments of the courts below; of the Trial Court dated 23.9.1999 and the First Appellate Court dated 18.8.2012; decreeing the suit of the respondent no.1/plaintiff as regards the suit land. The details of the suit property of the respondent no.1/plaintiff are stated in para 1 of the Order dated 31.1.2014.

4. The Demarcation Report which is prepared pursuant to the Order dated 31.1.2014 is dated 24.4.2014, and the same is accompanied by a detailed site map. The Report dated 24.4.2014 shows that three out of four reference

points were taken and thereafter on the basis of which, digitized maps were superimposed and consequently, demarcation carried out. This Report dated 24.4.2014 reads as under:-

“**Ref.No.:**0424A/REV-Shahdra/NUTAN/01/2014 **Date:** 24.04.2014

Methodology for Carrying out Survey for Khasra No.114 to 126 in Village Chandrawali Shahdara, East Delhi

Survey of Nutan Shiksha Sadan situated in Village Chandrawali Shahdara in East Delhi was conducted using Total Station equipment (TSM). The survey was started using the reference points given by Patwari Sh. S.K.Sharma & Kanungo Sh. Ishwar Das, in the following order & assumptions.

1) **Reference Point:**

The following Reference points were provided by the Revenue Officials in Village Chandrawali Shahdara:

1. South West corner of Khasra No.51 as corner of Temple on North side of GT road.
2. South East corner of Khasra No.25 as corner of shop on Loni road.
3. North East corner of Khasra No.108 situated near dust bin.
4. North East corner of Khasra No.445 situated as corner of a Mosque

The above mentioned reference points were connected using Total Station & checked for accuracy & the Revenue maps were superimposed using the same. Reference point No.1 & 3, as above, were used to superimpose the revenue map (Masavi). There was a difference of about 2.5 Gatta in the accuracy of these points. The reference point 4 was not matching when compared with Ref Point No.1, thus Reference point No.4 was ignored. It has been observed that widening of Loni road has been done, keeping in view the same, the reference point No.2 seems fairly accurate. A joint site visit was conducted with Patwari Sh. Sh. S.K.Sharma & Kanungo Sh. Ishwar Das.

2) **Digitization of Khasra map:**

Masavis of the concerned villages was taken as a basis for digitization of Revenue Maps. Sazra maps were digitized/drawn on the basis of the scaled certified copy of the sazra map. [Since the dimensions in old masavis are rounded upto 1 gatta (8'3'')]. The error has been distributed uniformly between the two reference points shown at site.

3) **Physical Survey:**

Ground survey using the above said reference was conducted using Total Station, on 18.04.2014 in the presence of Officers mentioned above & representatives Mr. Asad Yahaya Chabara, Mr. Shyam Sunder Agarwal & Mr. Ashok Kumar, picking up all ground features viz. boundary walls, hut, road, buildings, nalas etc. & a digital map was prepared covering the entire area.

4) **Superimposition of Maps:**

Digitized khasra Maps & Survey Plans produced above were superimposed using the common reference points & ground situation was analyzed and the drawing was prepared & is being submitted as an enclosure with this report.”

5. Counsel for the appellant very vehemently endeavored to argue that the Demarcation Report dated 24.4.2014 is faulty because reference points are not properly taken and they are vague, however, it is for this very reason that the last line of para 4 of the Order dated 31.1.2014 envisaging this eventuality that in spite of demarcation report appellant would still try to continue with litigation, accordingly, consent of the appellant was noted for not challenging the demarcation report. It is not disputed that the consent was given on behalf of the appellant and pursuant to that consent, and as per subsequent orders, demarcation was done, demarcation report prepared and which Report dated 24.4.2014 has been filed in this Court with a detailed site plan forming part of the demarcation report.

6. Since the demarcation report admittedly shows that the appellant/defendant no.1 is found physically located on the property of the

respondent no.1/plaintiff i.e Khasra Nos. 2898/120/2, 2899/121/1 and 2942/122, Moja Chandawli, Shahdara, Delhi, this second appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) cannot be entertained, and in any case which is against the concurrent judgments of the courts below.

7. I would like to put on record that I put it to counsel for the appellant as to whether appellant is interested in some time to vacate the premises inasmuch as there are judgments of the two concurrent courts against the appellant/defendant no.1 and even demarcation report pursuant to the consent Order dated 31.1.2014 is against the appellant/defendant no.1, the counsel on instructions states that appellant is not interested in taking time to vacate the suit premises but wants the matter to be decided. Accordingly, the second appeal is dismissed with costs. Respondent no.1 will file certificate of costs within a period of two weeks from today and costs will be paid to respondent no.1 within two weeks thereafter.

JULY 26, 2016
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VALMIKI J. MEHTA, J